ADMISSIBILITY OF JURORS' AFFIDAVITS TO SHOW THEIR MISCONDUCT.—Up to Lord Mansfield's revolutionary decision in *Vasie* v. *Delaval*,[1] it was the established practice, upon motion for a new trial, to accept indiscriminately the testimony of jurors and others as to misconduct of the jury.[2] In that case, however, it was decided that such affidavits could not be received from the jurymen, as they would thereby convict themselves of a high misdemeanor, and the rule that *nemo turpitudinem suam allegans audietur* was applied. This curious doctrine against self-stultification arose in the early part of the eighteenth century and at that time met with popular approval. The maxim, then regarded as a principle of evidence, has long since been repudiated; but its application to jurors' affidavits became so firmly implanted under Lord Mansfield's earnest patronage, that it survives to-day, both in England and America, as a rule of general practice,[3] as appears in the recent case of *Goldenberg* v. *Law* (N. Mex. 1913) 131 Pac. 499. The courts are usually content to apply the convenient formula that a juror may not impeach his verdict, and support it upon grounds of public policy.

The arguments most frequently urged in favor of the rejection of such affidavits are: first, that such testimony would tend to defeat the solemn act of the juror under oath; second, that it would induce tampering with the jury after they had given their verdict; third, that it would give an unconscientious juryman the means to destroy a verdict after he had assented to it.[4] The first point is applicable not merely to the statements of jurors, but to all testimony from whatever source purporting to show misconduct on the part of the jury. Yet often the same courts which deny jurors the right to confess such irregularities, accept without scruple sworn statements of court officers and others in this regard.[5] This undoubtedly encourages unlawful eavesdropping on the secret proceedings of the juryroom; and certainly the direct confession of guilt by a juror would seem to be of more weight than the report of observations unlawfully made by a non-participant. The second and third arguments need hardly be refuted. It is highly improbable that any of the schemes, whereby it is suggested that an unscrupulous juror might destroy the verdict, would ever be employed, or that successful tampering with the jury after the trial would be of frequent occurrence. However, even if a new trial be occasionally secured by such methods, that would not be sufficient reason for declaring all jurors' affidavits incompetent; and, as one author has suggested, the same argument would lead to an abolition of all appeals, because they are sometimes improperly granted.[6]

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[1](1785) 1 D. & E. 11.

[2]See Metcalfe *v.* Deane (1590) Cro. Eliz. 189; Philips *v.* Fowler (1735) Barnes 321; *cf.* Aylett *v.* Jewel (1779) 2 Wm. Bl. 1299. Prior *v.* Powers (1665) 1 Keb. 811, is usually cited as being in opposition to this view; but the affidavit was not actually rejected, although a new trial was refused. This was, however, inconsistent with the practice of the time. 1 Greenleaf, Evidence (16th ed.) § 252a.

[3]2 Thompson, Trials (2nd ed.) § 2618; see Dalrymple *v.* Williams (1875) 63 N. Y. 361.

[4]3 Graham & Waterman, New Trials (2nd ed.) 1428.

[5]See Dunn *v.* Hall (Ind. 1846) 8 Blackf.* 32; Bradt *v.* Rommel (1880) 26 Minn. 505; Wright *v.* Abbott (1894) 160 Mass. 395.

[6]4 Wigmore, Evidence, § 2353.

As illustrated by the case of *Capps* v. *State* (Ark. 1913) 159 S. W. 193, certain States, feeling the injustice of the rule, have made a statutory exception admitting the affidavit of a juror to impeach a verdict determined by lot or chance.[7] Others, have limited the doctrine to affidavits concerning matters taking place during the jury's retirement, and hold it competent for a juror to testify as to influences and occurrences outside the juryroom during the progress of the trial.[8] However, these exceptions merely demonstrate a partial recognition of the rule's deficiencies, and fail in any way to justify its existence.

By far the most reasonable position has been taken in some of the western States, under the leadership of Iowa.[9] The modern practice in these jurisdictions is shown in the recent case of *Maryland Casualty Co.* v. *Seattle Elec. Co.* (Wash. 1913) 133 Pac. 1097. Here, a juror's affidavit is received as competent evidence pertaining to matters either within or without the juryroom which do not essentially inhere in the verdict. Although some confusion has arisen in ascertaining exactly what matters do essentially inhere in the verdict, the accepted interpretation seems to be that a juror may testify to any facts that transpired within his own personal observation, but not to the effect of those facts upon the deliberations of the jury, nor to the motives and beliefs which led to the final verdict.[10] This doctrine, although a complete departure from the majority rule, seems satisfactory both in theory and practice. Moreover, inasmuch as it is almost universally recognized that a juror's affidavit is admissible to support his verdict,[11] it seems but reasonable when a verdict should be impeached upon grounds of misconduct that those who are best qualified to testify to the facts of such misconduct should be heard.

CONCURRENT JURISDICTION OVER RIVER BOUNDARIES.—In order to avoid the otherwise difficult determination of jurisdiction dependent upon the exact location on boundary waters of the place of an occur-

[7]California Code of Civ. Proc. § 657; Idaho, Rev. Codes § 4439. Moreover, it has been held that a quotient verdict is a "chance" verdict within the meaning of the statutes. Dixon *v.* Pluns (1893) 98 Cal. 384.

[8]Rush *v.* St. Paul City Ry. (1897) 70 Minn. 5. In Ohio it has been said that a juror's affidavit is not admissible to impeach a verdict, unless evidence *aliunde* is first offered. Parker *v.* Blackwelder (1893) 7 Oh. C. C. 140; Farrer *v.* State (1853) 2 Oh. St. 54.

[9]This minority rule, which is followed in Iowa, Kansas, Nebraska, Washington, and has been received with approval in some federal courts, see Mattox *v.* United States (1892) 146 U. S. 140, may be said to have originated in the case of Wright *v.* Ill. etc. Tel. Co. (1866) 20 Ia. 195, 210, although a similar doctrine had been expounded many years before in Tennessee. See Crawford *v.* State (Tenn. 1821) 2 Yerg. 60, 24 Am. Dec. 467 and note. By statute in Texas, a verdict may be attacked by the testimony of jurors given in open court but not by their affidavits. See San Antonio & A. P. Ry. *v.* Wells (Tex. 1912) 146 S. W. 645.

[10]This seems analogous to the application of the parol evidence rule with respect to written instruments, although it is not permissable to go behind the instrument (here, the verdict) to show the deliberations and intent of the parties, it is always proper to establish such informalities and breaches of prescribed procedures as *per se* invalidate the document. See 4 Wigmore, Evidence, § 2352.

[11]See Phillips *v.* Town of Scales Mound (1902) 195 Ill. 353; Haight *v.* Elmira (N. Y. 1899) 42 App. Div. 391.